IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

Writ Petition No.26856 of 1996

DATED 8-12-2006

BETWEEN

M.Prabhakara Rao and two others.

.. Petitioners

And

The District Collector, West Godavari District.

.. Respondents

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION NO.26856 OF 1996

ORDER:

Three petitioners have instituted this writ petition calling in question the correctness of the order passed by the 2nd respondent – Special Commissioner, Land Revenue in his proceedings dated 22.10.1996 dismissing the revision preferred by them and upholding the orders passed by the Collector cancelling the land assigned in their favour.

The case of the writ petitioners is that on 22.2.1986, the Mandal Revenue Officer, Dwaraka Tirumala, West Godavari had assigned each of them land of an extent of Ac.2.00 situate in Rs.No.9/1 of Dwaraka Tirumala Village, West Godavari District and that they have brought the said land into cultivation and that a part of the said land is also put to effective use by establishing a tiny ceramic unit therein. While so, the

Mandal Revenue Officer, Dwaraka Tirumala has issued a notice to them dt 20.9.2003 calling for their explanations as to why the D-Form pattas granted in their favour be not cancelled. The said show cause notice is rested upon only two grounds viz., that the patta was secured by mis-representing the facts that they are landless poor persons whereas they own lands and other extensive properties. The second ground found in the notice was that the land in question has not been brought under cultivation or put to use for which purpose the assignment has been made.

In response to the above notice, the writ petitioners have filed their explanations on 9.5.1994 pointing out that they do not own any land other than the land of an extent of Ac.2.00, which is assigned to them in survey No.9/1 of Dwaraka Tirumala Village and that they have brought them under cultivation by securing crop loan from a cooperative society. Therefore, they have disputed the veracity of the statements, which were made the basis for issuance of the show cause notice by the Mandal Revenue Officer. The writ petitioners further allege that while the enquiry into this issue is pending, the District Collector seems to have entertained certain complaints that the Mandal Revenue Officer had irregularly assigned the land in question in favour of the writ petitioners and that it deserves to be cancelled. The District Collector passed orders through his proceedings dated 8.5.1994 directing the Mandal Revenue Officer, Dwaraka Tirumala to initiate necessary action to resume the lands duly evicting the writ petitioners there from. The District Collector had raised certain fundamental issues as to why the land in question cannot be assigned inasmuch as the original classification of the land is “Konda poramboke” and that it has not been sub-divided and converted into assessed waste dry land before the assignment was made and that the assignment itself has been made without the approval of the Assignment

Committee and that the writ petitioners are not landless poor persons to be eligible for assignment of the land in their favour.

Against the orders passed by the District Collector in his proceedings dated 8.5.1994, the writ petitioners have carried the matter by way of revision before the Special Commissioner, Land Revenue, which has been rejected through the impugned proceedings dated 22.10.1996.

A detailed counter affidavit has been filed by the Mandal Revenue Officer, Dwaraka Tirumala, disputing the factual assertions made by the writ petitioners. It has been pointed out that the then Mandal Revenue Officer who has granted the assignment in favour of the writ petitioners had not followed the rules and the procedure on the subject and that no enquiry whatsoever preceded the grant. It has also been alleged that the land in question is situated within 2 K.Ms distance from the mandal head quarters and therefore it is not liable to be assigned at all, in view of the policy decision taken by the State Government and announced through G.O.Ms.No.696 dated 24.6.1985 read with G.O.Ms.No.911 dated 1.8.1985.

Sri E.Ayyappu Reddy, learned Senior Counsel appearing for the writ petitioners raised several contentions in support of the writ petition among them is that while the show cause notice issued by the Mandal Revenue Officer has rested itself only on two grounds viz., that the writ petitioners have misrepresented the true and correct facts relating to their economic status and that they have not brought the lands assigned to them under cultivation immediately thereafter, the orders passed by the District Collector and the Special Commissioner of Land Revenue are based on totally different reasons or grounds and hence such orders are totally in conflict with the principles of natural justice, inasmuch as the writ

petitioners did not have the opportunity of putting forth their version. Sri Ayyappu Reddy asserts that the writ petitioners are certainly landless poor persons and therefore, they are justified in soliciting and securing the assignment of the land in their favour. Further, when the petitioners have produced evidence to vouch that they have brought the lands under cultivation, it is impermissible to cancel the assignment on the ground that the land in question has not been brought under cultivation. Establishing a ceramic industry in a part of the land is not contrary to the assignment rules, inasmuch as the land is being put to very effective use and therefore the assignment itself is not liable to be cancelled.

Per contra, the learned Government Pleader for Revenue would urge that as the writ petitioners have not properly represented or correctly brought out all the relevant facts relating to their economic status in the society as they are extensively propertied persons and they have mislead the Mandal Revenue Officer in making him believe them to be landless poor persons, the State's Revenue administration is justified in resuming the possession of the lands in question duly cancelling the assignment made in favour of the writ petitioners. Further, when the writ petitioners have not been granted the assignment after duly following the procedure prescribed there for, the State's Revenue administration is entitled to cancel the same, inasmuch as irregular assignment of lands is not liable to be permitted at all.

Nextly, the learned Government Pleader would urge that the writ petitioners had full opportunity of contesting the matter and that they are completely in the know of all the relevant facts and hence they have not suffered any prejudice when the Collector and the special said Commissioner of land revenue have passed the orders taking into account

comprehensively all other relevant factors. In substance, the contention of the learned Government Pleader is that so long as relevant factors have weighed with the State's Revenue administration, it is no longer open to the writ petitioners to urge that the impugned exercise is vitiated or illegal.

It is a settled principle of law that no order can be passed without providing a reasonable and fair opportunity to the person against whom such an order is likely to be passed, inasmuch as such orders are likely to visit him with evil or civil consequences. Cancellation of an assignment of land in favour of the writ petitioners is undoubtedly an order which will not only visit them with evil or civil consequences but will also have disastrous complications arising from such cancellation in view of the development undertaken by the writ petitioners by way of securing loans from public financial institutions. It is therefore, absolutely necessary that before any attempt is made to cancel the assignment in favour of the writ petitioners, they must be informed in no uncertain terms, as to the reasons for which the proposed cancellation is intended to be undertaken. Only when true reasons or factors, which are weighing in the mind of the authorities are known to the writ petitioners, can they effectively participate in the enquiry that will be following thereafter. The defence, which the writ petitioners are called upon to enter can be comprehensive and can contain all the necessary details, only if the show cause notice, which precedes it, is equally comprehensive and precise. Vague or non-specific or unclear terms contained in the show cause notice are always considered as leading to or taking the effected person by surprise as he would not have entered his defence completely and comprehensively in the matter. It is, therefore, appropriate that the show cause notice must necessarily state all the factors, which are likely to be taken into consideration or likely to weigh against the writ petitioners, which may ultimately lead to

cancellation of the assignment in question.

It is not in doubt that the show cause notice issued by the Mandal Revenue Officer on 22.9.1993 is imprecise. It had merely taken the plea that the writ petitioners have secured the assignment by misleading the facts. It had not expanded the idea any further. The petitioners are not informed of the properties said to have been owned by them, prior to the assignment of the land, which factor renders them ineligible to seek such an assignment. It was also stated that the lands in question have not been brought under cultivation, which fact is seriously disputed by the writ petitioners. Therefore, there should have been a more precise exercise carried out by the State‘s Revenue administration before they indulged in cancellation of patta in favour of the writ petitioners. I am therefore inclined to accept the contention canvassed on behalf of the writ petitioners that the reasons given by the District Collector and by the Special Commissioner of Land Revenue in the revision are new and improved version from the course or line of thought pursued by the Mandal Revenue Officer while putting the writ petitioners on notice. Undoubtedly, the writ petitioners are prejudiced as they could not participate in the enquiry effectively by demonstrating their bona fides since they did not have before them the complete data and factors which are being taken into account against their interest.

In the circumstances, I am of the view that the writ petitioners should be provided a fair and reasonable opportunity of being put on notice of all such factors which are likely to be taken into consideration and account by the respondents before the actual cancellation of the assignment is ordered. In this view of the matter, I consider that the orders passed by the District Collector and the Special Commissioner of Land

Revenue deserve to be set aside and accordingly they are set aside. Since, I have not gone in to the merits of the matter, I do not prefer to express any opinion on the tenability or lack of merit in the contentions canvassed on behalf of the writ petitioners. It would be perfectly legitimate to cancel the assignment, if the writ petitioners are ineligible or the lands themselves are not liable to be assigned as they are within the prohibited category or distance. It is only appropriate that the competent authority draws up an appropriate show cause notice listing out all the factors that are likely to be taken into account and consideration against the writ petitioners and provide them with a fair and reasonable opportunity of hearing by demonstrating to the satisfaction of the competent authority that the assignment of land in their favour is not in conflict with any scheme of such assignment. The necessary action in this regard be taken within a period of three months from the date of receipt of this order. However, the possession of the lands in question with the writ petitioners shall not be disturbed until such time the enquiry is completed by the competent authority into the matter and appropriate orders are passed on merits thereafter.

With the above observations the writ petition stands disposed of. But, however, without costs.

NOOTY RAMAMOHANA RAO,J

Dt.8.12.2006.
msv